CMPMO No. 11 of 2007

5.3.2007 Present: Mr.Shrawan Dogra, Advocate, for the petitioner.

Learned Additional District Judge has allowed the appeal filed by the respondent mainly on the ground that the alleged height of the building at the Centre was raised by the respondent upto 2.50 mts. and this, as per the Regulations is a permissible height. Nothing has been shown to this Court in the present petition to controvert this finding.

As far as the height on the sides (2 mts.) is concerned, learned Appellate Authority in para 8 of the impugned judgment has observed and held that no inspection report was produced before him to substantiate that the respondent had raised the height at the sides upto 2 mts. According to the learned Court below, the petitioner had not even supplied the copy of the inspection report to the respondent. This apart, the said report apparently had been prepared by the officials of the petitioner Corporation in the absence of the respondent, which means that the respondent was not associated with the preparation of the report.

In the course of the judgment impugned in this petition, the learned Court below has

also observed that the order dated 21st December, 2005 passed by the Commissioner, Shimla Municipal Corporation, which was under challenge in the appeal filed by the respondent before the learned Additional District Judge had been passed without affording any opportunity of effective hearing to the respondent. In para 9 of the impugned judgment details with respect to the dates have been reflected which do go to suggest that perhaps the respondent was not afforded a proper opportunity of hearing as well as filing his reply and producing his evidence.

On a totality of circumstances, I feel that no interference is warranted in this petition as far as the impugned judgment is concerned. The petition is accordingly dismissed in limine.

5th March, 2007 (V.K.Gupta), C.J. (C)